

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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COBALT MULTIFAMILY INVESTORS I,
LLC, et al.,

Plaintiffs,

-against-

LISA ARDEN, et al.,

Defendants.

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KIMBA M. WOOD, UNITED STATES DISTRICT JUDGE:

On November 18, 2011, the court-appointed receiver for Plaintiffs moved for judgment against the two remaining Defendants in this case, David Farhi and Wyman Bethea, both of whom are former sales employees of the Cobalt entities. By motion for summary judgment against Farhi and default judgment against Bethea, the receiver seeks the disgorgement of commissions received by those Defendants from the allegedly fraudulent solicitation of investments in the Cobalt entities. Neither Defendant has responded to the motion filed against him.

In an August 14, 2012 Report and Recommendation (the "Report"), familiarity with which is assumed, Magistrate Judge Michael H. Dolinger recommended that the Court (1) grant the receiver's motion for summary judgment against Farhi on the first cause of action but dismiss as to the third cause of

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ORDER

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action¹; and (2) grant the receiver's motion for default judgment against Bethea.

The Report informed the parties that, pursuant to 28 U.S.C. § 636(b)(1)(C) and Federal Rule of Civil Procedure 72(b), in conjunction with Federal Rule of Civil Procedure 6, they had fourteen days from service of the Report to file any objections. The Report cautioned that failure to file timely objections would preclude appellate review. No objections have been filed to the Report, and the time to object has expired.

When no objections are filed to a magistrate judge's report and recommendation, a district court need only satisfy itself that there is no "clear error on the face of the record" in order to accept the recommendation. Fed. R. Civ. P. 72(b) advisory committee's note; see also Nelson v. Smith, 618 F. Supp. 1186, 1189 (S.D.N.Y. 1985).

The Court has reviewed the Report and finds it to be well-reasoned and free of any clear error on the face of the record. The Court, therefore, accepts the recommendations and adopts the Report.

As noted in the Report, the parties' failure to object to the Report also precludes appellate review of this Court's

¹ As discussed in the Report, Magistrate Judge Dolinger found that the relief requested by the receiver as to his third cause of action would be duplicative of the relief to be awarded on the first cause of action, as well as not justified under New York law governing the receiver's standing in this case.

decision to adopt the Report. The Second Circuit has held that failure to timely object to a magistrate judge's report and recommendation operates as a waiver of appellate review of the district court's ultimate order. See DeLeon v. Strack, 234 F.2d 84, 86 (2d Cir. 2000) (citing Small v. Sec'y of Health & Human Servs., 892 F.2d 15, 16 (2d Cir. 1989)). The Supreme Court has also upheld this practice, "at least when the parties receive clear notice of the consequences of their failure to object." Small, 892 F.2d at 16 (citing Thomas v. Arn, 474 U.S. 140, 155 (1985)).

Accordingly, the Court adopts the Report in its entirety. The Court GRANTS the motion for summary judgment against Farhi (Dkt. No. 185) and the motion for default judgment against Bethea (Dkt. No. 181), and enters judgments against Farhi and Bethea in accordance with the terms summarized in the Report. The clerk is ordered to close the case. All pending motions are moot.

SO ORDERED.

Dated: New York, New York

~~August~~ _____, 2012

September 4,

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KM

Kimba M. Wood
Kimba M. Wood
United States District Judge